



NORTHAMPTON LICENSE COMMISSION
May 7, 2014 MINUTES

Commission Chairman William Rosen, Commissioner Stephanie Levin, Commissioner Brian Campedelli

The License Commission met at 4:00 p.m., in City Council Chambers, 212 Main Street, Northampton, on the following:

1. Members present/absent: **Commission Chairman William Rosen, Commissioner Stephanie Levin, Commissioner Brian Campedelli**
2. Meeting Called to Order **Commissioner Rosen called the meeting to order at 4:00 p.m. Commissioner Campedelli arrived at 4:10 p.m. (parking).**
3. Announcement of Audio/Video Recording of Meeting **The meeting was audio-recorded, and video-recorded by NCTV.**

Mary L. Midura, former License Commission Clerk made the following statement: "For full disclosure under Open Meeting Law, I, Mary L. Midura, am no longer the License Commission Clerk. I am here to facilitate the items on this agenda only." Ms. Midura introduced Cynthia Murphy, License Commission Clerk, to begin her duties on May 19, 2014.
4. **Public Comment NONE**
5. **Update from Eric Suher regarding License #090000004 Annual All Alcohol Restaurant, 298 Main Street, and License #090000043 Seasonal All Alcohol Restaurant, 26-28 Center Street**

Commissioner Rosen noted that Mr. Suher was not present. An employee of Mr. Suher stated that Mr. Suher was on his way from Holyoke and should arrive in five minutes.

6. **Application for Change of Manager**
Northampton Lodge BPOE #997, 17 Spring Street, Florence
License #090000006 Annual All Alcoholic Club
Proposed Manager: Barbara J. Franklin

Barbara Franklin was present for the application. Ms. Franklin has 19+ years' experience as supervisor, secretary, and officer at the Lodge. Ms. Franklin works 40 hours per week, with another 20 hours' volunteer time.

Commissioner Levin moved approval of the application for Change of Manager; Commissioner Rosen seconded. The motion passed unanimously (2-0). Commissioner Campedelli had not yet arrived at the meeting.

7. **Application for Short Term Wine & Malt Liquor License**
Event: Arts Night Out
Participating Establishments: A.P.E., Artisan Gallery, Bang Bang Body Arts, Beehive Sewing, Big Wheel Press @ Guild Art Supply, Dance Northampton Art Gallery, Don Muller Gallery, FOE Gallery, Historic Northampton Museum, Hosmer Art Gallery, J. Rich Clothing for Men, Living Art Studio, Northampton Center for the Arts, ODE Boutique, Oh My Sensuality Shop, Old Courthouse Art Gallery, Oxbow Gallery, Pinch, Quarry Café at River Valley Market, Sticks and Bricks, Thornes Marketplace, William Baezek Fine Arts, Imagine Northampton, R. Michelson Galleries, Sip Café, Provisions, Cathy Cross, Happy Valley, Smith College Museum of Art, Nolen Art Lounge, Cup and Top Café
Dates of Events: Friday, June 13, July 11, August 8, September 12, October 10, November 14, and December 12, 2014 and January 9, February 13, March 13, April 10, and May 8, 2015.
Time of Events: 5:00 pm – 8:00 pm
(Server information and Insurance were not required for 2012-2014, per License Commission)
Fee = \$61.00 for Group

Penny Burke was present for the application.

Commissioner Levin moved approval of the license; Commissioner Rosen seconded. The motion passed unanimously (2-0). Commissioner Campedelli had not yet arrived at the meeting.

➤ **Update from Eric Suher regarding License #090000043 Seasonal All Alcohol Restaurant, 26-28 Center Street**

Chairman Rosen noted that the Health Department has confirmed that Mr. Suher has not applied for or obtained a Food Service Establishment permit from that department for License #090000043. Mr. Suher stated this was an oversight. Commissioners discussed statements of intentions made by Mr. Suher at previous meetings over the past years (see attached timeline). Mr. Suher noted that the oversight of obtaining the Food Service permit from the Health Department would be remedied immediately. Mr. Suher requested two weeks more to open the establishment at 26-28 Center Street.

Upon deliberation of a vote, Commissioner Rosen and Commissioner Levin both noted Mr. Suher's numerous statements regarding the opening of the establishment at 26-28 Center Street; the establishment is not open for business to date. Commissioner Campedelli noted that previous deadlines given by this Commission have not been met with action by this Commission, and to allow two more weeks to open the establishment would be reasonable. Mr. Suher stated that allowance of two more weeks to open this establishment would save him and the City from further appeal and/or legal costs.

The Northampton License Commission voted 2 Yes (Commissioner Rosen, Commissioner Levin), 1 No (Commissioner Campedelli) to cancel and revoke License #090000043 Seasonal All Alcohol Restaurant, Licensee Name: 26-28 Center Street, LLC, 26-28 Center Street, Northampton, MA 01060. This action has been taken per Massachusetts General Laws, Chapter 138, Section 77 *Cancellation of license upon cessation of licensed business.*

Mr. Suher will receive a certified letter within three (3) business days, and Mr. Suher has five (5) days from receipt of the decision letter to appeal this decision to the Alcoholic Beverages Control Commission, 239 Causeway Street, Boston, MA 02114. The decision of the A.B.C.C. shall be final.

➤ **RE: License #090000004 Annual All Alcohol Restaurant, 298 Main Street**

The Northampton License Commission further stated that License #090000004 Annual All Alcohol Restaurant, Licensee Name: 4 West St. Corporation, 298 Main Street, Northampton, MA 01060, will be discussed on June 4, 2014; the meeting begins at 4:00 p.m. in City Council chambers, 212 Main Street, Northampton, MA. Mr. Suher has already received and signed a certified receipt for a letter requesting his attendance at the June 4, 2014 meeting (attached).

8. Application for New Seasonal Wine & Malt Restaurant License

Mosaic Café, Inc.
78 Masonic Street, Northampton, MA
Proposed Manager: El Hafid Assab

Ms. Midura noted that there was a miscommunication with the applicant regarding the requirement for returned, signed abutter cards. Ms. Midura recommended this application be continued to the June 4, 2014 meeting. *Ms. Midura met the applicant on May 8, 2014 and explained the correct process; the applicant will re-send the notifications for June 4, 2014 hearing of the application.*

The application will be heard on June 4, 2014.

9. Application for Charity Wine License

Friends of Forbes Library, Inc.
20 West Street, Northampton, MA 01060
Date and Time of Event: Friday, September 26, 2014 **5:30 pm – 8:00 pm**
Insurance information has been provided✓
No Fee

Ms. Midura recommended approval of the application, however, we will hold the application until the applicant obtains and submits an updated Certificate of Solicitation. The one attached to the application expires on May 15, 2014. Last year, the ABCC would not consider approval of the application until a current Certificate of Solicitation was submitted. Ms. Midura sent an email to Serena Smith regarding this on May 8, 2014.

Commissioner Levin moved approval of the application, with no fee; Commissioner Campedelli seconded. The motion passed unanimously (3-0).

10. Application for Short Term Wine & Malt license

Glasgow Lands Scottish Festival

Event: 21st Annual Glasgow Lands Scottish Festival

Date and Time of Event: Saturday, July 19, 2014 9:30 am – 10:00 pm

Insurance information is pending✓ Servers' information has been provided.

Fee: \$61.00

Peter Langmore was present for the application. Beer and Mead will be served. Insurance will be provided before the event.

Commissioner Levin moved approval of the license, pending proof of insurance; Commissioner Campedelli seconded. The motion passed unanimously (3-0).

11. Application for Transfer of License #090000125 Annual Wine & Malt Restaurant and Change of Location, and New Common Victualler License and New Entertainment License

ConVino, LLC d/b/a ConVino, 150 Main Street, Suite 1, Thornes Marketplace, Northampton, MA

Proposed Manager: Caroline McDaniel

Current Licensee: Eclipse 186 Main, LLC d/b/a Eclipse 186 Main, 186 Main Street, Northampton, MA

Caroline McDaniel was present for the application. The proposed establishment will be a wine bar and restaurant, with wine by the glass, small plates of food. Ms. McDaniel was unclear regarding her intentions for entertainment; the Commission postponed action on the Entertainment application, and Ms. McDaniel should return for approval closer to her opening date. Projected opening is September 1 or September 15, 2014. The space is the old Dynamite Records space. Ms. McDaniel has 30+ years experience as chef, restaurant owner, retail food service, and business consultant.

Ms. Midura recommended approval *contingent upon the applicant's contact of Health Department, Building Commissioner, and Department of Public Works for her intention to use outdoor tables and chairs, and the applicant's submission of documentation of additional investors.*

Commissioner Levin moved approval of 16C (no detriment to churches, schools, etc.); Commissioner Rosen seconded. The motion passed unanimously (3-0).

Commissioner Rosen moved approval of the Transfer of License, Change of Location, and Common Victualler license, *contingent upon the applicant's contact of Health Department, Building Commissioner, and Department of Public Works for her intention to use outdoor tables and chairs, and the applicant's submission of documentation of additional investors*; Commissioner Levin seconded. The motion passed unanimously (3-0).

12. Application for Short Term Wine & Malt license

Academy of Music Theatre

Event: Roger McGuinn concert

Date and Time of Event: Friday, June 6, 2014 6:00 pm – 11:00 pm

Insurance information and Servers information has been provided✓

Fee Waiver Requested

Application for Short Term Wine & Malt license

Academy of Music Theatre

Event: An Intimate Evening with Art Garfunkel Concert

Date and Time of Event: Thursday, June 19, 2014 6:00 pm – 11:00 pm

Insurance information and Servers information has been provided✓

Fee Waiver Requested

Application for Short Term Wine & Malt license

Academy of Music Theatre

Event: Django in June

Date and Time of Event: Friday, June 20, 2014 and Saturday, June 21, 2014 6:00 pm – 11:00 pm

Insurance information and Servers information has been provided✓

Fee Waiver Requested

Alison Klenja was present for the applications.

Commissioner Levin moved approval of the licenses, with fee waiver; Commissioner Rosen seconded. The motion passed unanimously (3-0).

13. Applications for Short Term All Alcoholic Licenses

Trustees of Smith College
Events: Alumnae Reunions
Dates: May 15, 16, 17, 22, 23 and 24, 2014
Insurance Information and Servers information has been provided✓
Fee: \$102.00 per event (17 events total)

Kathleen Zeija was present for the applications.

Commissioner Levin moved approval of the licenses; Commissioner Campedelli seconded. The motion passed unanimously (3-0).

14. Application for Farm Winery Liquor License to Sell at Farmers Markets and Agricultural Events

Massachusetts Farm Wineries & Growers Association, Inc.
Participating Wineries: Amherst Farm Winery, Berkshire Winery, Coastal Vineyards, Mineral Hills Winery, Green River Ambrosia, Hardwick Vineyards and Winery, Les Trois Emme Vineyard and Winery, Mount Warner Vineyards, Still River Winery, Travessia Winery, Truro Vineyards, Westport Rivers Vineyard and Winery, and Zoll Cellars
Event: 2014 Taste of Massachusetts Wine Festival
Date and Time of Event: Sunday, June 8, 2014 1:00 p.m. – 6:00 p.m.
Location: Three County Fairgrounds
Fee = \$50.00

Kim LaFleur was present for the application; the list of wineries has changed and provided to the office of the License Commission. The hours of service would be 11:00 am – 2:00 pm and 4:00 pm – 7:00 pm. Ms. LaFleur will submit further documentation and MDAR documentation before the event. There will be no live entertainment by this group of applicants.

Commissioner Levin moved approval of the license, pending further submission of documentation; Commissioner Rosen seconded. The motion passed unanimously (3-0).

15. Application for Farm Winery Liquor License to Sell at Farmers Markets and Agricultural Events

Carr's Ciderhouse
Event: Northampton Tuesday Farmers Market
Date and Time of Event: Tuesdays, April 15, 2014 – November 11, 2014, 1:30 p.m. – 6:30 p.m.
Location: Pedestrian Way behind Thornes Marketplace, Northampton
Required documentation is pending✓
Fee = \$50.00

Nicole Blum was present for the application. All documentation has been submitted.

Commissioner Levin moved approval of the license; Commissioner Campedelli seconded. The motion passed unanimously (3-0).

16. Application for Short Term Wine & Malt license

Michael F. Curtin VFW Post 8006
Event: 2nd Annual Pig Roast
Date and Time of Event: Saturday, July 26, 2014 12:00 pm – 10:00 pm
Insurance information and Servers information has been provided✓
Fee = \$61.00

Tom Pease was present for the application. Last year was the first event, cars were parked off the street on rented property, and the event was a success.

Commissioner Rosen moved approval of the license; Commissioner Levin seconded. The motion passed unanimously (3-0).

17. Approval of Minutes of March 3, 2014 and April 2, 2014

Commissioner Levin moved approval of the minutes; Commissioner Campedelli seconded. The motion passed unanimously (3-0).

18. NEW BUSINESS — *Reserved for topics that the Chair did not reasonably anticipate would be discussed.*

Commissioner Rosen presented a Certificate of Special Recognition, signed by Mayor David J. Narkewicz, to Stephanie Levin for dedicated service to the License Commission and residents of Northampton since March 4, 1999.

At 5:33 p.m., Commissioner Rosen moved to adjourn and was seconded by Commissioner Campedelli. The motion to adjourn passed unanimously (3-0).

The next meeting of the Northampton License Commission is June 4, 2014.

***Respectfully Submitted,
Mary L. Midura
May 9, 2014***



City of Northampton, Massachusetts
License Commission
City Hall, 210 Main Street
Northampton, MA 01060

William Rosen, Chair

May 8, 2014

26-28 Center Street, LLC
Eric Suher, Member
47 Jackson Street
Holyoke, MA 01040

Eric Suher
PO Box 790
Holyoke, MA 01040

RE: License #090000043 Seasonal All Alcoholic Restaurant

Dear Mr. Suher:

This letter constitutes notice that on May 7, 2014, the Northampton License Commission voted to cancel License #090000043 Seasonal All Alcoholic Restaurant ("the License"), Licensee Name: 26-28 Center Street, LLC ("the Licensee"), 26-28 Center Street, Northampton, MA 01060 ("the Licensed Premises"). This action has been taken in accordance with Massachusetts General Laws, Chapter 138, Section 77 *Cancellation of license upon cessation of licensed business.*

The Commission found that the ABCC approved the transfer of the License to the Licensee on February 18, 2009. In the ensuing period of more than five (5) years, the Licensee has never operated the Licensed Premises and has never exercised the License. In addition, the Commission called the Licensee before it on March 7, 2012, more than two years ago, in response to an ABCC advisory regarding pocket licenses. The Commission called the Licensee before it again on October 3, 2012, and at that time the Licensee informed the Commission that the Licensed Premises would be open and operating within 90-120 days. Having failed to open in that time frame, the Commission called the Licensee before it on June 5, 2013, and at that time the Licensee represented that the Licensed Premises would be open and operating by early Fall 2013. Having failed to open by early Fall 2013, the Commission gave formal notice of hearing to the Licensee to be held on November 6, 2013. On November 6, 2013, Commission ordered that the Licensed Premises be open and operating by January 6, 2014. The Licensee failed to operate the premises by January 6, 2014. The Licensee appeared before the Commission on February 5, 2014, at which time the Licensee represented that the Licensed Premises would be open and operating "within the next weeks." On May 7, the Licensee appeared before the Commission and admitted that the Licensed Premises were not open and operating, that the windows of the premises were obscured in violation of M.G.L. c. 138, § 1, and that the Licensee had no food service permit for the premises, which would be needed in order to operate. On these findings, the Commission voted to cancel the License.

The relevant Commission minutes and other documents in the Commission hearing record are attached hereto and incorporated herein by reference.

Upon receipt of this decision letter, you must surrender the License to the Commission, which is located in the Office of the Mayor, 210 Main Street, Northampton, MA. You have five (5) days to appeal this decision to the Alcoholic Beverages Control Commission, 239 Causeway Street, Boston, MA 02114. The decision of the A.B.C.C. shall be final.

If you have any questions or concerns, you may call the Northampton License Commission at 587-1210.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Rosen', with a long horizontal line extending to the right.

William Rosen
WR/mlm

Enclosures

CERTIFIED MAIL #7012 3050 0000 8965 5542
RETURN RECEIPT REQUESTED
POSTAGE PREPAID MAIL

Cc: Police Chief Russell P. Sienkiewicz
Louis Hasbrouck, Building Commissioner
City Solicitor Alan Seewald
Alcoholic Beverages Control Commission, 239 Causeway Street, Boston, MA 02114

NOTICE TO ALL RETAIL LICENSEES

The Alcoholic Beverages Control Commission announces that on October 1, 2004 it will launch a compliance initiative to identify all existing retail licenses issued pursuant to M.G.L. c. 138, § 12 and § 15 that are not being actually operated. Any licensee that does not comply with its obligations to conduct the licensed business and holds a so-called "pocket license" will be subject to enforcement action by the Commission.

Licensees are reminded that M.G.L. c. 138, § 77 provides that the Commission may cancel the license of any license holder who "ceases to conduct the licensed business" that is, any license holder who closes the business or stops doing business.

Licensees should be conducting the licensed business on all days authorized by the license. Any licensee not conducting the business as of the date of this Notice should immediately comply with its obligations by: (1) operating the license on the days and at the location authorized under the license; or, (2) filing the appropriate application to transfer the location of the license to a location where the licensee will comply and operate the licensed business; or, (3) filing the appropriate application to transfer the ownership of the license to a person that will comply and operate the license on the days and at the location authorized under the license.

Any licensee who is complying with its obligations to conduct the licensed business and does not close the business or stop doing business will not be subject to this Commission compliance initiative to enforce the provisions of M.G.L. c. 138, § 77.

Questions concerning this Notice can be addressed to the Commission's Executive Director, Ellen Moriarty.

Dated at Boston, Massachusetts this 28th day of September, 2004.

Eddie J. Jenkins, Chairman
Suzanne Iannella, Commissioner
Robert H. Cronin, Commissioner



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street Boston, MA, 02114

Contact Us
617-727-3040

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Commission Guidelines & Advisories

ABCC

Submit

Advisories

The ABCC periodically issues advisory notices in an effort to assist alcoholic beverages licensees by clarifying that all operations, particularly those hosted within the licensed premises, are structured, advertised and operated in compliance with all laws and regulations of the Commonwealth. Below are the most recently issued notices:

2013

- [ABCC Advisory for Farmer Series Pouring Permit](#)
- [ABCC Advisory on New DOR Process](#)
- [2013 Holiday Calendar](#)

2012

- [2012 Renewal Signature Advisory](#)
- [New Caterer's License Advisory and Caterer FAQ's](#)
- [Identification Card Advisory](#)
- [2012 Holiday Calendar](#)
- [Seasonal Delivery Memo](#)
- ["Three \(3\) Store Limit" Advisory](#)

2011

- [2011 Holidays](#)
- [CORI Advisory](#)
- [Dec 26, 2011 Advisory](#)
- [EBT Cards Advisory](#)
- [Farmer's Market Advisory](#)
- [Municipal Golf Courses Advisory from Golf Course Decision](#)
- [Mandatory Crowd Manager\(s\) & Daily Fire and Building Safety Advisory](#)
- [One \(1\)-Day License Advisory](#)

2010

- [Alcoholic Beverages Energy Drinks Advisory](#)
- [Emergency Regulation Regarding Alcoholic Beverage Energy Products](#)
- [Emergency Regulation 11-18-2010](#)
- [List of BANNED Alcoholic Beverages Under 204 CMR 2.19](#)
- [Mandatory Liquor Liability Insurance](#)
- [Sunday Sales by Section 12 at 10AM Advisory](#)

2009

- [2010 Holidays](#)
- [Wine & Malt Retailers Advisory](#)
- [Wine and Malt Wholesalers Advisory](#)
- [New Sales Tax on Retail Alcoholic Beverages](#)

2008-2004

- [2009 Happy Hour Notice to Industry](#)
- [2005 Notice on Fire Safety](#)
- [2004 Pocket Licenses](#)

Guidelines

The ABCC periodically issues guidelines it applies in deciding whether to approve a license application or whether an activity complies with the law. These guidelines are intended to educate and assist licensees and local authorities in avoiding compliance issues. Below are links to the most frequently requested guidelines that affect Golf Courses, Patios and Other Outdoor Areas, and The Factors Reviewed To Decide If An Event Is A "Private Function Not Open To The Public" under the ABCC's so-called "Happy Hour Regulation."

- [Passport Notice](#)
- [Happy Hour 2009 Notice to Industry Holidays](#)
- [Extension of Premises Guidelines](#)
- [Golf Course License Approval Commission](#)

Email & Bookmark
[More](#)



Administrative Division
Contact Information
(617)-727-3040

Ralph Sacramone - Executive Director
Ext 731 -
rsacramone@tre.state.ma.us

Patricia Hathaway - Admin. Assistant -
Hearings/Decisions
Ext 738 - phathaway@tre.state.ma.us

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XX** PUBLIC SAFETY AND GOOD ORDER**CHAPTER 138** ALCOHOLIC LIQUORS**Section 77** Cancellation of license upon cessation of licensed business

Section 77. The licensing authorities may, after hearing or reasonable opportunity therefor, cancel any license issued under this chapter if the licensee ceases to conduct the licensed business. If the local licensing authorities determine that a license should be cancelled as aforesaid the licensee may appeal to the commission as if such authorities had refused to grant the license upon an original application therefor, and the decision of the commission upon such appeal shall be final.



City of Northampton, Massachusetts
License Commission
City Hall, 210 Main Street
Northampton, MA 01060

William Rosen, Chair
Mary L. Midura, Clerk

April 3, 2014

Eric Suher
PO Box 790
Holyoke, MA 01041

RE: License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

Dear Mr. Suher:

The Northampton License Commission requests your attendance at the May 7, 2014 and June 4, 2014 meetings of the Northampton License Commission. The meetings begin at 4:00 p.m. in City Council Chambers, 212 Main Street, Northampton, MA. The Commission noted, with regret, that you were not in attendance at the April 2, 2014 meeting of the License Commission. On November 6, 2013, the License Commission required you to provide updates at each monthly meeting.

On March 3, 2014, you attended the meeting of the Northampton License Commission and updated the Commission on your plans for the above licenses. The minutes of that meeting and the minutes of the November 6, 2013 meeting are attached.

The Commission had a brief discussion in your absence of one point that they would like to bring to your attention regarding the premises at 26-28 Center Street. A copy of M.G.L. Chapter 138, Section 1 is attached. Please note the definition of "restaurant" includes *"No advertising matter, screen, curtain or other obstruction which, in the opinion of the licensing authorities, prevents a clear view of the interior of a restaurant shall be maintained in or on any window or door thereof..."* On March 3, 2014, you assured the License Commission that the premises at 26-28 Center Street were ready to open for business; as of this date, there is still brown paper covering all windows and doors.

If you have any questions or concerns, you may call me at 587-1210.

Sincerely,

Mary L. Midura

Mary L. Midura
Executive Secretary

Enclosures
CERTIFIED MAIL # 7012 3050 0000
RETURN RECEIPT REQUESTED
POSTAGE PREPAID MAIL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Eric Suher
PO Box 790
Holyoke, MA 01041

2. Article Number:
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
[Signature]
- B. Received by (Printed Name) *SUTHER*
- C. Date of Delivery *APR 3 2014*
- D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

7012 3050 0000 8965 5535



City of Northampton, Massachusetts
License Commission
City Hall, 210 Main Street
Northampton, MA 01060

William Rosen, Chair
Mary L. Midura, Clerk

October 18, 2013

Eric Suher
PO Box 790
Holyoke, MA 01041

RE: License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

Dear Mr. Suher:

Enclosed for your information is copy of the opinion of City Solicitor Alan Seewald, which will be presented at the November 6, 2013 meeting of the Northampton License Commission. The meeting begins at 4:00 p.m. in City Council Chambers, 212 Main Street, Northampton, MA.

Also, enclosed is copy of a letter I sent to you on October 1, 2013, for which I have received a returned receipt with your signature of Certified Mail #7010 2780 0002 3875 9786.

The Northampton License Commission reserves the right to take further action on these licenses, and any other licenses you hold on these premises, which may include SUSPENSION or REVOCATION of such licenses.

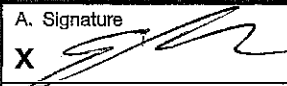
If you have any questions or concerns, you may call me at 587-1210.

Sincerely,

Mary L. Midura
Executive Secretary

Enclosures

CERTIFIED MAIL # 7010 2
RETURN RECEIPT REQUIRED
POSTAGE PREPAID MAIL

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <input checked="" type="checkbox"/> X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Eric Suher PO Box 790 Holyoke, MA 01041		B. Received by (Printed Name) Suher	C. Date of Delivery
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7010 2780 0002 3875 9809	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540



SEEWALD, JANKOWSKI & SPENCER, P.C.

ATTORNEYS AT LAW

Five East Pleasant Street ♦ Amherst, MA 01002

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Tel (413) 549-0041
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as@sjsamherst.com
www.sjsamherst.com

October 15, 2013

William Rosen, Chair
Northampton License Commission
City of Northampton
210 Main Street
Northampton, MA 01060

RE: Alcoholic Beverage License - Failure to Operate Licensed Business
License Nos. 090000004 and 090000043

Dear Mr. Rosen:

You have requested my opinion with regard to the above-referenced licenses. I understand that the licensees holding the above-referenced licenses, 4 West S Corporation and 26-28 Center Street LLC, have failed to operate the licensed business on the licensed premises. For the following reasons, it is my opinion that these licenses constitute so-called "pocket licenses," and that the Northampton License Commission has a substantial basis to revoke the licenses and/or to decline to renew them.

Factual Background as to Licence 090000004 - 4 West S Corporation

The license issued to 4 West S Corporation is an annual all alcohol restaurant license for the premises at 298 Main Street, formerly the Old Baptist Church. The corporation was formed in 2000. The current owner of the premises, 298 Main Street, LLC, acquired the property from Eric Suher, in 2006. On November 19, 2008, the ABCC approved the transfer of the subject license from Pudding Lane, Inc. at 5 Bridge Street to the current licensee and licensed premises. Since the transfer of the license, the premises has never been opened for business. According to the records of the Office of the Building Commissioner, the last permit issued for this location was an electrical permit for new service and wiring issued on May 22, 2008. There are no open building permits for the subject premises.

Factual Background as to Licence 090000043 - 26-28 Center Street LLC

The license issued to 26-28 Center Street LLC is a seasonal all alcohol restaurant license for the premises at 26-28 Center Street. This license is subject to conversion to an annual license in accordance with St. 2008, c. 144. The company was formed in 2006. The current owner, Suher Properties, LLC, acquired the property from Joan L. Shea, in 2005. On February 18, 2009, the ABCC approved the transfer of the subject license from 4 West S Corporation at 298 Main Street to the current licensee and licensed premises. Since the transfer of the license, the premises has never been opened for business. According to the records of the Office of the Building Commissioner, the last permit issued for this premises was a building permit to renovate drop ceilings issued on April 23, 2009. There are no open building permits for the subject premises.

The principal of both of these licensees, Eric Suher, was called before this Commission on October 3, 2012. At that time he stated that the premises at 298 Main Street had been under construction for four years and that he was hopeful that it would open in late fall or early winter. As to the Center Street premises, Mr. Suher alleged that the renovation was delayed due to the construction of the police station. Mr. Suher was called before the Commission again on March 6, 2013, in advance of the renewal of the seasonal license for the Center Street premises. He did not appear at the hearing, but he sent an email to the Clerk of the Commission stating that he expected to open the Center Street premise by June 1st. Mr. Suher was once again called before the Commission on June 5, 2013, at which time he stated that the Center Street premises may open in early fall 2013 and the Main Street location by late fall 2013. Since his initial meeting with the Commission last October, Mr. Suher has not renewed any permits necessary to complete the renovations at the two premises, and according to the Building Commissioner neither location is close to ready for occupancy.

Analysis

As the ABCC made clear in its Notice to All Retail Licensees, dated September 28, 2004, a licensee must conduct the licensed business on the license premises. As the ABCC stated: "Any licensee that does not comply with its obligations to conduct the licensed business and holds a so-called 'pocket license' will be subject to enforcement action by the Commission." The licenses held by 4 West S Corporation and 26-28 Center Street LLC are without question pocket licenses. The clear legislative policy against allowing such pocket licenses is embodied in M.G.L. c. 138, § 77, which authorizes the local licensing to cancel any license where the license holder "ceases to conduct the licensed business." While the licenses held by 4 West S Corporation and 26-28 Center Street LLC may not fit squarely within the language of § 77 inasmuch as the licensed premises were never opened for business and, therefore, could not be found to have ceased the conduct of business, the failure to commence business falls within the clear intent of the statute. In my opinion, the Commission may cancel the subject licenses upon a finding that the licensees have failed after a reasonable period of time to conduct the licensed business.

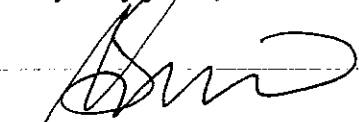
William Rosen, Chair
Northampton License Commission
October 15, 2013
Page 3

In addition, M.G.L. c. 138, § 16A provides that a licensee who applies for renewal in November is prima facie entitled to the renewal. However, an applicant has no absolute right to the renewal, and a licensing authority may "reject for cause" any such application. *Id.*; *Piona v. Selectmen of Canton*, 333 Mass. 510, 511 (1956). In my opinion, the failure to conduct the licensed businesses constitutes "cause" for rejecting the renewal applications for these premises, particularly where, as here, that failure extends over several years.

To the extent that the Commission is inclined to take action against these licensees, my advice is that the Commission proceed on both bases as set forth above.

Please let me know if the Commission needs any further information in this regard.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Alan Seewald', is written over a horizontal line.

Alan Seewald
Northampton City Solicitor

AS/A

xc: Mayor David J. Narkewicz

Timeline of Eric Suher's appearances before the Northampton License Commission:
(from Meeting Agendas and Minutes)

December 3, 2008

UPDATE: Eric Suher, holder of License #090000004 for Annual All Alcohol License – letter sent November 10, 2008 requesting Mr. Suher attend this meeting. Eric Suher was present to inform the Commission that plans are slowly proceeding for the former church. He agreed to keep the Commission clerk posted of the progress. He hopes to open in April or May of 2009.

March 7, 2012

License Commission Request of Intentions regarding License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant, Licensee: Eric Suher

Eric Suher was present. Commissioner Shimel noted that the ABCC has an advisory related to "Pocket Licenses", and asked Mr. Suher his plans for these two licensed premises. Mr. Suher stated that the church property of License #090000004 is now in the 4th year of construction. Mr. Suher is hopeful to have this property operational by late fall or early winter. The property of License #090000043 is the former Blue Note Guitar with small basement area. This has been delayed somewhat due to the Police Facility construction, and opening may depend on those issues. Mr. Suher stated his intentions to convert License #090000043 to an Annual license, once the premises are operational, per the Chapter 144 of the Acts of 2008. Commissioner Shimel asked, and Mr. Suher agreed to give the Clerk more frequent updates regarding progress on both premises.

October 3, 2012

Letter to Mr. Eric Suher requesting attendance at October 3, 2012 meeting regarding License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

Eric Suher was present. Commissioner Rosen noted to Mr. Suher that this review has been called as it is renewal time for annual liquor licenses. Commissioner Rosen noted that the Commission would like to know Mr. Suher's plans.

Eric Suher stated that the licenses are at existing premises with ongoing work at both locations. Mr. Suher stated he should have firm dates of opening by March 2013. The Center Street location will be a small lounge with food and beverages, no music, no entertainment, for the wait between shows. This location was the rice pudding, then Blue Note Guitar. There is at least 90 – 120 days' work to be done. The church location has at least 6 months' work to be done. The dome was recently finished. There is detailed historic work to be done. Realistically, the premise would be partially open by summer 2013, with the total three floors to be used for weddings, events, meetings. This will have a full kitchen with catering and liquor service.

Commissioner Levin noted that there is no desire to lose these licenses, but the ABCC has a directive regarding pocket licenses. Commissioner Levin asked Mr. Suher if he has heard from the ABCC.

Mr. Suher has not heard from the ABCC, again stating that the licenses are each on specific premises. Mr. Suher is not looking to change the premises. Mr. Suher stated that the ABCC directive does not specify that an operation must be completed by a certain date. Mr. Suher stated that all taxes are paid to the City, and his intention is to convert the Seasonal license #090000043 to an Annual license as soon as the establishment opens.

In answer to Commissioner Levin, Mr. Suher noted the greatest impact is to his business, as he continues to pay for the licenses. Mr. Suher believes that the facility at the former church will bring business and benefits to the City.

Commissioner Rosen noted that the License Commission continues to ask Mr. Suher's intentions periodically; there have been several licensees who have raised this issue. Mr. Suher stated that the ABCC is vague about licenses and does not give a time frame for operations.

Commissioner Rosen noted that people have inquired about these licenses. Commissioner Rosen also noted that the ABCC recently ruled not to allow conversion of Seasonal licenses to Annual (License #090000043 may convert per Chapter 144 of the Acts of 2008).

Mr. Suher stated he would give the Clerk a timeline for the next License Commission meeting. Commissioner Rosen noted to Mr. Suher that he may be called again to defend his continued holding of these licenses.

June 5, 2013

Letter to Mr. Eric Suher: Requesting attendance regarding License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

Mr. Suher was present. Commissioner Rosen noted the ABCC guideline regarding pocket license and potential licenses, and questioned Mr. Suher on the progress of the licenses. Mr. Suher noted some delay, with the permit at the former church to be renewed and approximately five months' work to open in late fall 2013. The property at 26 Center Street may open in early fall 2013, with strictly lounge space, no music, light food, and memorabilia. Commissioner Rosen noted the annual license comes up for renewal in November 2013; Mr. Suher understood he will be asked his intentions at that time.

November 6, 2013

Letter to Mr. Eric Suher: Requesting Mr. Suher's attendance regarding License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

- City Solicitor Memorandum to Northampton License Commission

Regarding License #090000043 Seasonal All Alcoholic Restaurant: The Commission voted to require the premise of 26-28 Center Street to be in operation by January 6, 2014.

Regarding License #090000004 Annual All Alcoholic Restaurant: Mr. Suher stated that he would submit new permit information by November 8, 2013. Mr. Suher submitted a project timeline with opening dates of June 14-21, 2014. The Commission voted to require the licensee to provide a copy of the building permit for the premises at 298 Main Street at its meeting on December 4, 2013, and to provide updates at each monthly Commission meeting demonstrating expeditious and continuous work toward completion. The Commission reserved the right to revoke the license prior to the June 21, 2014 completion deadline should the licensee fail to provide monthly updates demonstrating to the Commission's satisfaction that the construction is proceeding expeditiously and continuously toward completion.

Mr. Suher made several offers to walk the License Commission members through the facilities to see the work done. Chairman Rosen stated that the Building Commissioner's opinion would suffice.

The Building Commissioner and Fire Safety Inspector are prepared to speak to the License Commission about these properties on December 4, 2013 when they give their annual report regarding inspections for liquor licensed premises. The Northampton License Commission will vote on December 4, 2013 to approve or disapprove all annual license renewals.

December 4, 2013

Update from Eric Suher regarding Annual License #090000004 and Seasonal License #090000043

- Discuss Approval/Disapproval of Renewal of License #090000004 – 4 West Street Corporation
- Building Permits

Mr. Hasbrouck submitted a report regarding building permits at 298 Main Street and 28 Center Street. Eric Suher was present and noted his intention to complete work and begin operation at 26-28 Center Street by the January deadline.

Commissioner Rosen moved approval of renewal of Annual License #090000004. (*Renewal of Seasonal License #090000043 will be done at the April 2014 meeting*). Commissioner Levin seconded. The motion passed unanimously (2-0).

2014 meetings:

January 8, 2014 –Due to unforeseen illness of a Commissioner, the meeting was cancelled on January 6, 2014. All Licensees on the agenda were notified.

February 5, 2014:

Update from Eric Suher regarding License #090000004 and License #090000043
Application for New Common Victualler License #246
The Green Room, 26-28 Center Street
Manager: Eric Suher

Mr. Suher stated that The Green Room would be open within the next weeks. The liquor license is seasonal; therefore service of alcohol would not begin until April 1, 2014. Work on 298 Main Street is progressing for late June opening; all area is public, with offices in back. The Clerk asked for the Commission's approval of a Common Victualler license for 26-28 Center Street. A memorandum from Building Commission Louis Hasbrouck is attached.

Commissioner Rosen moved approval of the Common Victualler License; Commissioner Campedelli seconded. The motion passed unanimously (2-0).

March 5, 2014:

Update from Eric Suher regarding License #090000004 Annual All Alcoholic Restaurant and License #090000043 Seasonal All Alcoholic Restaurant

Chairman Rosen noted that Commissioner Campedelli was on his way, and, as no vote must be taken for this item, Commissioner Rosen asked Mr. Suher for an informal update (which Chairman Rosen relayed to Commissioner Campedelli upon his arrival). Mr. Suher noted that The Green Room is ready to open, with weather a factor in placement of signage; the Seasonal liquor license on this premise will allow alcohol service as of April 1, 2014. Mr. Suher plans to submit application to convert to Annual liquor license, per Chapter 144 of the Acts of 2008. Construction at 298 Main Street is moving along; the original plan was to use the Smith parking lot on weekends, no plan has been discussed with the St. Mary's church. Mr. Suher will give another update on April 2, 2014.

April 2, 2014:

Update from Eric Suher regarding License #090000004 and License #090000043

Mr. Suher was not present.

May 7, 2014:

Update from Eric Suher regarding License #090000004 Annual All Alcohol Restaurant, 298 Main Street, and License #090000043 Seasonal All Alcohol Restaurant, 26-28 Center Street

Chairman Rosen noted that the Health Department has confirmed that Mr. Suher has not applied for or obtained a Food Service Establishment permit from that department for License #090000043. Mr. Suher stated this was an oversight. Commissioners discussed statements of intentions made by Mr. Suher at previous meetings over the past years (see above timeline). Mr. Suher noted that the oversight of obtaining the Food Service permit from the Health Department would be remedied immediately. Mr. Suher requested two weeks more to open the establishment at 26-28 Center Street.

Upon deliberation of a vote, Commissioner Rosen and Commissioner Levin both noted Mr. Suher's numerous statements regarding the opening of the establishment at 26-28 Center Street; the establishment is not open for business to date. Commissioner Campedelli noted that previous deadlines given by this Commission have not been met with action by this Commission, and to allow two more

weeks to open the establishment would be reasonable. Mr. Suher stated that allowance of two more weeks to open this establishment would save him and the City from further appeal and/or legal costs.

The Northampton License Commission voted 2 Yes (Commissioner Rosen, Commissioner Levin), 1 No (Commissioner Campedelli) to cancel and revoke License #090000043 Seasonal All Alcohol Restaurant, Licensee Name: 26-28 Center Street, LLC, 26-28 Center Street, Northampton, MA 01060. This action has been taken per Massachusetts General Laws, Chapter 138, Section 77 *Cancellation of license upon cessation of licensed business* (attached).

Mr. Suher will receive a certified letter within three (3) business days, and Mr. Suher has five (5) days from receipt of the decision letter to appeal this decision to the Alcoholic Beverages Control Commission, 239 Causeway Street, Boston, MA 02114. The decision of the A.B.C.C. shall be final.

The Northampton License Commission further stated that License #090000004 Annual All Alcohol Restaurant, Licensee Name: 4 West St. Corporation, 298 Main Street, Northampton, MA 01060, will be discussed on June 4, 2014; the meeting begins at 4:00 p.m. in City Council chambers, 212 Main Street, Northampton, MA. Mr. Suher has already received and signed a certified receipt for a letter requesting his attendance at the June 4, 2014 meeting (attached).